

PATENT

Part #16

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Hisatoshi Hirota

Application No.: 09/541,779

Filed: April 3, 2000

Title: CAPACITY CONTROLLER  
OF CAPACITY VARIABLE  
COMPRESSOR

Office of Petitions  
Patent and Trademark Office

DECLARATION OF THADDEUS C. STANKOWSKI

Mail Stop Petition  
Commissioner for Patents  
Washington, D.C. 20231

Sir:

I, Thaddeus C. Stankowski, declare that the entire delay in filing the required reply in the above-captioned case from the due date for the reply until I left the law firm responsible for the case on November 10, 2003, was unintentional.

The following factual information is provided for the Commissioner's convenience in support of the above:

1. I am a member of the Patent Bar, Registration No. 45,522. I was a patent attorney with the law firm of Nilles & Nilles, S.C., from January 2000 until Nilles & Nilles closed on November 10, 2002. I was a patent attorney with the Milwaukee office of the law firm of Patterson, Thuente, Skaar & Christensen, L.L.C., from November 11, 2002, until the closing of that office on November 10, 2003. Upon closing of the Nilles & Nilles firm, the firm of Patterson, Thuente, Skaar & Christensen became responsible for the subject application.

2. On March 2, 2002, Nilles & Nilles received a Notice of Abandonment dated February 25, 2002, in the above-referenced case. A copy of the Notice is enclosed as Exhibit A. The Notice of Abandonment indicates that an Office Action was mailed on May 9, 2001, and that the above-identified application was abandoned in view of Applicant's failure to timely file a proper reply to the May 9, 2001, Office Action.

3. On March 11, 2002, a Petition to Withdraw the Holding of Abandonment Under 37 C.F.R. § 1.181(a) was filed in this matter with the Patent and Trademark Office by the Nilles & Nilles firm. A true and correct copy of that Petition along with a facsimile transmission report indicating successful transmission of 13 pages to the Patent and Trademark Office on March 11, 2002, are attached as Exhibit B.

4. A first Status Inquiry regarding the application and the Petition filed March 11, 2002, was sent by facsimile to the Patent and Trademark Office on June 5, 2002. No response was received. A second Status Inquiry regarding the application and the Petition filed March 11, 2002, was sent by facsimile to the Patent and Trademark Office on August 6, 2002. No response was received.

5. The law firm of Nilles & Nilles closed on November 10, 2002. Responsibility for the file pertaining to the above-identified application was transferred to the law firm of Patterson, Thunte, Skaar & Christensen, L.L.C. I joined the Milwaukee office of Patterson, Thunte, Skaar & Christensen on November 11, 2002. A Substitution of Attorney was filed with the Patent and Trademark Office on December 5, 2002.

6. I filed Supplemental Information for Petition to Withdraw Holding of Abandonment with Examiner David Scherbel on February 19, 2003. Julie A. Zavoral also filed Supplemental Information for Petition to Withdraw Holding of Abandonment with Examiner David Scherbel on February 19, 2003. True and correct copies of both transmissions of the

Supplemental Information for Petition to Withdraw Holding of Abandonment along with the facsimile transmission reports indicating successful transmission of 8 pages each to the Patent and Trademark Office on February 19, 2003, are attached as Exhibit C.

7. I left the law firm of Patterson, Thunte, Skaar & Christensen, L.L.C., on November 10, 2003.

The undersigned declares further that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statement may jeopardize the validity of the patent.

Date: 12/8/04

By Thaddeus C. Stankowski  
Thaddeus C. Stankowski  
Reg. No. 45,522



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/541,779	04/03/2000	Hisatoshi Hirota	133.046	4974

7590

02/25/2002

James J Nilles  
Nilles & Nilles SC  
Fistar Center Suite 2000  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5345

EXAMINER

SOLAK, TIMOTHY P

ART UNIT

PAPER NUMBER

3746

DATE MAILED: 02/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



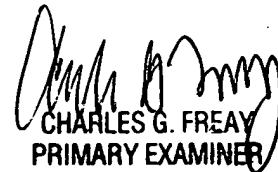
SD

<b>Notice of Abandonment</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/541,779	HIROTA, HISATOSHI	
	<b>Examiner</b>	<b>Art Unit</b>	
	Timothy P. Solak	3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 09 May 2001.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicant's.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

  
 CHARLES G. FREAY  
 PRIMARY EXAMINER

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

MODE = MEMORY TRANSMISSION

START=MAR-11 12:49

END=MAR-11 12:53

FILE NO.=431

STN NO.	COMM.	ABBR NO.	STATION NAME/TEL NO.	PAGES	DURATION
001	OK	2	17033086916	013/013	00:03:40

-NILLES NILLES

\*\*\*\*\* -NILLES NILLES - \*\*\*\*\* 414 276 0982-\*\*\*\*\*

## NILLES & NILLES.s.c.

JAMES E. NILLES  
S. MICHAEL PATTON  
LINDA E.B. HANSEN  
-----  
CHARLOTTE SHAPIRO  
THADDEUS C. STANKOWSKI

INTELLECTUAL PROPERTY ATTORNEYS

FIRSTAR CENTER, SUITE 2000  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WI 53202-5345

TELEPHONE: 414.276.0977  
FACSIMILE: 414.276.0982  
EMAIL: jnilles@nilles-nilles.com

### FACSIMILE TRANSMITTAL SHEET

TO:	Office of Petitions	FROM:	James E. Nilles
COMPANY:	U.S. Patent Office	DATE:	March 11, 2002
FAX NO.:	703-308-6916	PAGES:	13 (Including cover sheet)
RE:	U.S. Ser. No. 09/541,779 Attorney Docket 133.046	OPERATOR:	Diane Schwaiger
<input type="checkbox"/> Original Will Follow		<input checked="" type="checkbox"/> Original Will Not Follow	
<input type="checkbox"/> Urgent		<input type="checkbox"/> For Review	
<input type="checkbox"/> Please Comment		<input type="checkbox"/> Please Reply	
<input type="checkbox"/> Please Recycle		<input type="checkbox"/> Enclosures Will Follow With Original	

Sir:

Attached are the following documents in connection with patent application U.S. Serial No. 09/541,779:

- 1) Petition to Withdraw the Holding of Abandonment Under 37 CFR 1.181(a)
- 2) Preliminary Amendment (seven pages) faxed to U.S. Patent Office on April 30, 2001
- 3) Fax sheet confirming 007/007 pages of Preliminary Amendment sent

G:\Data\CLIENT\133\046\PTO-FAX.doc

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EXHIBIT B

# NILLES & NILLES<sub>,S.C.</sub>

JAMES E. NILLES  
S. MICHAEL PATTON  
LINDA E.B. HANSEN  
-----  
CHARLOTTE SHAPIRO  
THADDEUS C. STANKOWSKI

INTELLECTUAL PROPERTY ATTORNEYS

FIRSTAR CENTER, SUITE 2000  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WI 53202-5345

TELEPHONE: 414.276.0977  
FACSIMILE: 414.276.0982  
EMAIL: jnilles@nilles-nilles.com

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## FACSIMILE TRANSMITTAL SHEET

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TO:	Office of Petitions	FROM:	James E. Nilles
COMPANY:	U.S. Patent Office	DATE:	March 11, 2002
FAX NO.:	703-308-6916	PAGES:	13 (Including cover sheet)
RE:	U.S. Ser. No. 09/541,779 Attorney Docket 133.046	OPERATOR:	Diane Schwaiger
<input type="checkbox"/> Original Will Follow <input checked="" type="checkbox"/> Original Will Not Follow <input type="checkbox"/> Enclosures Will Follow With Original			
<input type="checkbox"/> Urgent <input type="checkbox"/> For Review <input type="checkbox"/> Please Comment <input type="checkbox"/> Please Reply <input type="checkbox"/> Please Recycle			

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Sir:

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- 3) Fax sheet confirming 007/007 pages of Preliminary Amendment sent

G:\Data\CLIENT\133\046\PTO-FAX.doc

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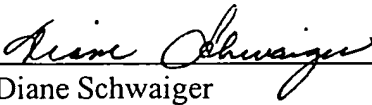
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I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office, Attention: Office of Petitions, on the date shown below.

Facsimile: 703-308-6916

Pages - 13 (Including cover sheet)

Date: March 11, 2002

  
Diane Schwaiger

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Hisatoshi Hirota

Group Art Unit 3746

Serial No.: 09/541,779

Examiner: T. Solak

Filing Date: April 3, 2000

Docket No. 133.046

For: *Capacity Controller of Capacity Variable Compressor*

Customer No. 023907

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT  
UNDER 37 C.F.R. 1.181(a)

Attention: Office of Petitions  
Assistant Commissioner for Patents  
Box DAC  
Washington, DC 20231

Sir:

In response to the Notice of Abandonment, date February 25, 2002, Applicant requests the withdrawal of the holding of abandonment under 37 C.F.R. 1.181(a). In particular, Applicant asserts the Application was not properly held abandoned.

According to the Notice of Abandonment, the Application is abandoned in view of Applicant's failure to timely file a proper reply to the Office letter mailed on May 9, 2001 because no reply has been received. However, Applicant submits that there is no reply required by the Office letter mailed on May 9, 2001 for at least four reasons. First, there is no Office action requiring a response. Second, the Interview Summary is not a proper Office

FILE NO. 09/541,779  
DUE DATE: 05-11-2002  
EXAMINER: KIM/INIT: 20020411  
ACTION: 10 RES PER: 2 M  
FILED PET TO WITHDRAW ABANDONMENT / 2002



communication requiring a response. Third, the comments in the Interview Summary do not affirmatively require a response. Fourth, the only communication possibly requested by the Interview Summary was in fact filed in the U.S. Patent and Trademark Office.

First, there is no Office action requiring a response. More particularly, the Office letter mentioned in the Notice of Abandonment is an Interview Summary. The only possible indication in the Interview Summary of a possible required response is that it does not have box 2(i) checked. The Interview Summary goes on to state that “unless the paragraph above has been checked, the formal written reply to the last Office action must include the substance of the interview... If a reply to the last Office action has already been filed, Applicant is given one month from this interview date to file a statement of the substance of the interview.” However, there is no “last Office action” requiring a response. The only communication received regarding any possible examination is the Interview Summary itself. However, as further discussed below, the Interview Summary itself does not require a response. The only mention of a response in the Interview Summary refers to a nonexistent “last Office action.” Thus, there is no response required.

Second, the Interview Summary is not a proper Office communication requiring a response. In particular, the Interview Summary fails to comply with MPEP §713.04. More particularly, the Interview Summary expressly states that the form must be signed unless it is an attachment to a signed Office action. The Interview Summary does not contain the signature of the Examiner who conducted the interview. Furthermore, the Interview Summary is not an

attachment to a signed Office action. Accordingly, the Interview Summary is not a proper Office communication requiring a response.

Third, the comments in the Interview Summary do not affirmatively require a response. The comments only mention the substance of a telephonic communication on April 27, 2001. The comments only state Applicant was informed, "claims 1-3 were narrative in nature and lacked structure and (method) claims 8-9 lacked steps" and that Applicant informed the Examiner "he would fax a pre-amendment." Thus, the Interview Summary only stated information conveyed to Applicant and it only further stated Applicant's intentions. The Interview Summary did not state a requirement for a response. Therefore, the Interview Summary did not require a response.

Fourth, Applicant submits that the only communication possibly requested by the Interview Summary was in fact filed in the U.S. Patent and Trademark Office. In particular, the enclosed Preliminary Amendment noted in the Interview Summary was in fact filed on April 30, 2001. The Preliminary Amendment did in fact include the substance of the telephonic communication on April 27, 2001. Furthermore, the Preliminary Amendment contains a Certificate of Facsimile signed by Angela M. Weinstock certifying that the Preliminary Amendment was sent by facsimile to Examiner T. Solak at telephone number 703-308-7763 on April 30, 2001. Additionally, Applicant encloses the Facsimile Confirmation Transmission confirming receipt of the facsimile transmission including 7 pages at telephone number 703-308-7763 on April 30, 2001. Thus, the Preliminary Amendment noted in the Interview Summary was in fact filed in the U.S. Patent and Trademark Office. Accordingly, the only communication

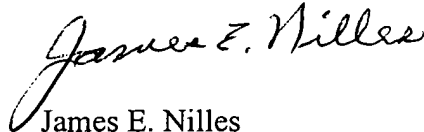
possibly requested by the Interview Summary was in fact filed in the U.S. Patent and Trademark Office.

Thus, the Application was not properly held abandoned. Accordingly, Applicant requests the withdrawal of the holding of abandonment.

Should the Examiner have any further questions or comments, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

The Commissioner is hereby authorized to deduct any additional fees arising as a result of this or any other communication from or to credit any overpayments to Deposit Account No. 14-1080.

Respectfully submitted,



James E. Nilles  
Registration No. 16,663

Dated: March 11, 2002

NILLES & NILLES, S.C.  
Firststar Center, Suite 2000  
777 East Wisconsin Avenue  
Milwaukee, WI 53202  
Telephone: (414) 276-0977  
Facsimile: (414) 276-0982

MODE = MEMORY TRANSMISSION

START=FEB-19 17:15

END=FEB-19 17:18

FILE NO.=817

STN NO.	COMM.	ABBR NO.	STATION NAME/TEL NO.	PAGES	DURATION
001	OK	a	17037464590	008/008	00:02:55

-PATTERSON THUENTE WI -

\*\*\*\*\* -PATTERSON WI - \*\*\*\*\* 414 276 0982- \*\*\*\*\*

**PATTERSON, THUENTE, SKAAR & CHRISTENSEN, LLC**

2000 US Bank Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5345

**FACSIMILE COVER SHEET**

TELEPHONE: (414) 276-0977

FACSIMILE: (414) 276-0982

TOTAL NUMBER OF PAGES BEING SENT (INCLUDING COVER SHEET): 8

☐ Original documents to follow by mail

☒ No originals will be sent

DATE: 19 February 2003

TO: EXAMINER SCHERBEL, BOX DAC

FAX #: (703) 746-4590

PHONE#: (703) 308-1272

YOUR REF.: USSN 09/541,779

OUR REF.: W1031.45-US-01  
[Formerly 133.046]

FROM: THADDEUS C. STANKOWSKI

PHONE#: (414) 276-0977

COMMENTS:

\*

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FACSIMILE SENT BY J. WHITE

EXHIBIT C

PATTERSON, THUENTE, SKAAR & CHRISTENSEN, LLC

2000 US Bank Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5345

FACSIMILE COVER SHEET

TELEPHONE: (414) 276-0977

FACSIMILE: (414) 276-0982

TOTAL NUMBER OF PAGES BEING SENT (INCLUDING COVER SHEET): 8

☐ Original documents to follow by mail

☒ No originals will be sent

DATE: 19 February 2003

TO: EXAMINER SCHERBEL, BOX DAC

FAX #: (703) 746-4590

PHONE#: (703) 308-1272

YOUR REF.: USSN 09/541,779

OUR REF.: W1031.45-US-01  
[Formerly 133.046]

FROM: THADDEUS C. STANKOWSKI

PHONE#: (414) 276-0977

COMMENTS:

\*

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FACSIMILE SENT BY J. WHITE

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
	)	
Hisatoshi HIROTA	)	
	)	
Application No.: 09/541,779	)	Office of Petitions
	)	Patent and Trademark Office
Filed: April 3, 2000	)	
	)	
Title: CAPACITY CONTROLLER	)	
OF CAPACITY VARIABLE	)	
COMPRESSOR	)	
	)	

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**SUPPLEMENTAL INFORMATION FOR PETITION  
TO WITHDRAW HOLDING OF ABANDONMENT**

ATTN: Examiner Scherbel  
Box DAC  
Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

This supplemental information is being provided to clarify the information provided in the original Petition to Withdraw Holding of Abandonment, which was faxed to the PTO on March 11, 2002.

This supplemental information is being provided by the firm of Patterson, Thuente, Skaar & Christensen, L.L.C. The Patterson firm has taken over responsibility for the above-identified patent application from Mr. James E. Nilles, who has recently retired and closed the Nilles & Nilles, S.C. firm. The Patterson firm is a separate entity from the Nilles firm, but has taken over the space formerly occupied by the Nilles firm, and has access to the docketing system formerly used by the Nilles firm.

Applicant asserts that the Office communication having a mailing date of May 9, 2001, which was received from the PTO, did not include an Office Action.

In particular, Applicant asserts that the Office communication having a mailing date of May 9, 2001 merely included a PTO-90C cover sheet, a PTO-413 form comprising two pages, (one sheet titled Interview Summary and the second sheet titled Summary of Record Interview Requirements), and a Notice of Draftperson's Patent Drawing Review.

A search of the file jacket reveals that the above-listed items are the only items in the file for this application corresponding to the May 9, 2001 Office communication. No Office Action appears in the file, nor any indication that an Office Action was received appears in the file. The only prior art references in the file are those that were listed on form PTO-1449, submitted with an Information Disclosure Statement dated March 9, 2001.

When the May 9, 2001 Office communication was received, the person (unknown) who did the docketing at the Nilles firm did docket two dates: a three month date of Aug. 9, 2001 and a six month date of Nov. 9, 2001. It must be noted, however, that these entries were entered in the docket system with entry code 1, which is "Office Action or Examiner's Letter." Quite possibly, the person who did the docketing was unsure about what to do with an Interview Summary, and to be on the safe side, docketed standard response times. A copy of the docketed items that are printed out as stickers and attached to the Office communication is attached hereto.

On August 31, 2001, for whatever reason, the docket records pertaining to the Office communication were deleted. A search of the file jacket and computer word processing files indicate that no Response to an Office Action was ever prepared or attempted. Quite possibly, at that time, Mr. Nilles reviewed the file jacket, noted only an Interview Summary, and requested that the docket records be deleted.

The handwritten notes of Mr. Nilles in this file written on a sheet of yellow paper dated Feb. 22, 2002 state: "I only rec'd interview summary (1 page) and never rec'd action."

Thus, Applicant asserts that this Application was not properly held abandoned. Accordingly, Applicant requests the withdrawal of the holding of abandonment.

Thus, Applicant asserts that this Application was not properly held abandoned. Accordingly, Applicant requests the withdrawal of the holding of abandonment.

Should the Examiner have any further questions or comments, the Examiner is invited to contact the Applicant's undersigned representative at the telephone number listed below.

The Commissioner is hereby authorized to deduct any additional fees arising as a result of this or any other communication from or to credit any overpayments to Deposit Account No. 50-2522.

Respectfully submitted,



Thaddeus C. Stankowski  
Attorney for Applicant(s)  
Registration No. 45,522

Customer No. 35110  
Patterson, Thuente, Skaar & Christensen, LLC  
2000 US Bank Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5345  
Telephone: (414) 276-0977  
Facsimile: (414) 276-0982

*Please grant any extension of time necessary for entry; charge any fee due to Deposit Account No. 50-2522*

**CERTIFICATE OF FACSIMILE**

I hereby certify that this document is being deposited with the United States Patent and Trademark Office via facsimile transmission to (703) 746-4590 to the Attention of: Examiner Scherbel, Box DAC, Assistant Commissioner for Patents, Washington, D.C. 20231 on 18 February 2003.

J. White  
Printed Name

J. White  
Signature





UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/541,779

04/03/00

HIRUTA

H

133,040

GM02/0509

JAMES E NILLES  
NILLES & NILLES SC  
FISTAR CENTER SUITE 2000  
777 EAST WISCONSIN AVENUE  
MILWAUKEE WI 53202-5345

EXAMINER

SOLAK, F

ART UNIT

PAPER NUMBER

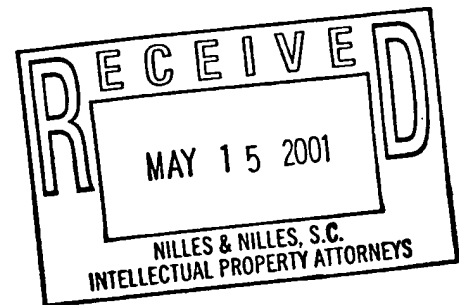
3740

DATE MAILED:

05/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks



FILE NO:US09541779ATTY:JEN  
DUE DATE:08-09-2001 ( 20010809 )  
GRUNECKER, KINK/INIT:( 20010509 )  
ACTION:01 RES PER:3 M DK1  
/ 14740

FILE NO:US09541779ATTY:JEN  
DUE DATE:11-09-2001 ( 20011109 )  
GRUNECKER, KINK/INIT:( 20010509 )  
ACTION:01 RES PER:6 MONTHS DK1  
6 Month Follow-up Notice / 14741

## Interview Summary

Application No.

09/541,779

Applicant(s)

HIROTA, HISATOSHI

Examiner

Timothy P. Solak

Art Unit

3746

All participants (applicant, applicant's representative, PTO personnel):

(1) Timothy P. Solak.

(3) \_\_\_\_\_.

(2) Mr. Nilles.

(4) \_\_\_\_\_.

Date of Interview: 27 April 2001.

Type: a) ☒ Telephonic b) ☐ Video Conference

c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.

If Yes, brief description:

Claim(s) discussed: 1-10.

Identification of prior art discussed: None.

Agreement with respect to the claims f) ☒ was reached. g) ☐ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: I informed Mr. Nilles of problems in claims 1-9, namely claims 1-3 were narrative in nature and lacked structure and (method) claims 8-9 lacked steps. Mr. Nilles informed me that he would fax a pre-amendment.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

i) ☐ It is not necessary for applicant to provide a separate record of the substance of the interview(if box is checked).

Unless the paragraph above has been checked, THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

\_\_\_\_\_  
Examiner's signature, if required

## Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

#### Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

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- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
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(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
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09/541 779

# NOTICE OF DRAFTPERSON'S PATENT DRAWING REVIEW

The drawing filed (insert date) 4/3/00 are:A. 1 not objected to by the Draftperson under 37 CFR 1.84 or 1.152.B. 1 objected to by the Draftperson under 37 CFR 1.84 or 1.152 as indicated below. The Examiner will require submission of new, corrected drawings when necessary. Corrected drawings must be submitted according to the instructions on the back of this notice.

## 1. DRAWINGS. 37 CFR 1.84(a): Acceptable categories of drawings:

Black ink. Color.

Color drawing are not acceptable until petition is granted.

Fig.(s) \_\_\_\_\_

Pencil and non black ink is not permitted. Fig(s) \_\_\_\_\_

## 2. PHOTOGRAPHS. 37 CFR 1.84(b)

Photographs are not acceptable until petition is granted.

3 full-tone sets are required. Fig(s) \_\_\_\_\_

Photographs not properly mounted (must bristol board or photographic double-weight paper). Fig(s) \_\_\_\_\_

Poor quality (half-tone). Fig(s) \_\_\_\_\_

## 3. TYPE OF PAPER. 37 CFR 1.84(e)

Paper not flexible, strong, white and durable.

Fig.(s) \_\_\_\_\_

Erasures, alterations, overwritings, interlineations, folds, copy machine marks not acceptable. (too thin)

Mylar, vellum paper is not acceptable (too thin).

Fig(s) \_\_\_\_\_

## 4. SIZE OF PAPER. 37 CFR 1.84(f): Acceptable sizes:

21.0 cm by 29.7 cm (DIN size A4)

21.6 cm by 27.9 cm (8 1/2 x 11 inches)

All drawings sheets not the same size.

Sheet(s) \_\_\_\_\_

## 5. MARGINS. 37 CFR 1.84(g): Acceptable margins:

Top 2.5 cm Left 2.5 cm Right 1.5 cm Bottom 1.0 cm  
SIZE: A4 SizeTop 2.5 cm Left 2.5 cm Right 1.5 cm Bottom 1.0 cm  
SIZE: 8 1/2 x 11

Margins not acceptable. Fig(s) \_\_\_\_\_

Top (T) \_\_\_\_\_ Left (L)

Right (R) \_\_\_\_\_ Bottom (B)

## 6. VIEWS. CFR 1.84(h)

REMINER: Specification may require revision to correspond to drawing changes.

Views connected by projection lines or lead lines.

Fig.(s) \_\_\_\_\_

Partial views. 37 CFR 1.84(h)(2)

Brackets needed to show figure as one entity.

Fig.(s) \_\_\_\_\_

Views not labeled separately or properly.

Fig.(s) \_\_\_\_\_

Enlarged view not labeled separately or properly.

Fig.(s) \_\_\_\_\_

## 7. SECTIONAL VIEWS. 37 CFR 1.84(h)(3)

Hatching not indicated for sectional portions of an object.

Fig.(s) \_\_\_\_\_

Sectional designation should be noted with Arabic or

Roman numbers. Fig(s) \_\_\_\_\_

## 8. ARRANGEMENT OF VIEWS. 37 CFR 1.84(i)

Words do not appear on a horizontal, left-to-right fashion when page is either upright or turned, so that the top becomes the right side, except for graphs. Fig.(s) \_\_\_\_\_

Views not on the same plane on drawing sheet. Fig.(s) \_\_\_\_\_

## 9. SCALE. 37 CFR 1.84(k)

Scale not large enough to show mechanism with crowding when drawing is reduced in size to two-thirds in reproduction.

Fig.(s) \_\_\_\_\_

## 10. CHARACTER OF LINES, NUMBERS, &amp; LETTERS. 37 CFR 1.84(l)

Lines, numbers &amp; letters not uniformly thick and well defined, clean, durable and black (poor line quality).

Fig.(s) 1, 5, 6, 8

## 11. SHADING. 37 CFR 1.84(m)

Solid black areas pale. Fig.(s) \_\_\_\_\_

Solid black shading not permitted. Fig.(s) \_\_\_\_\_

Shade lines, pale, rough and blurred. Fig.(s) \_\_\_\_\_

## 12. NUMBERS, LETTERS, &amp; REFERENCE CHARACTERS.

37 CFR 1.48(p)

Numbers and reference characters not plain and legible.

Fig.(s) \_\_\_\_\_

Figure legends are poor. Fig.(s) 4, 11

Numbers and reference characters not oriented in the same direction as the view. 37 CFR 1.84(p)(3) Fig.(s) \_\_\_\_\_

English alphabet not used. 37 CFR 1.84(p)(3) Fig.(s) \_\_\_\_\_

Numbers, letters and reference characters must be at least .32 cm (1/8 inch) in height. 37 CFR 1.84(p)(3) Fig.(s) \_\_\_\_\_

## 13. LEAD LINES. 37 CFR 1.84(q)

Lead lines cross each other. Fig.(s) \_\_\_\_\_

Lead lines missing. Fig.(s) \_\_\_\_\_

## 14. NUMBERING OF SHEETS OF DRAWINGS. 37 CFR 1.48(i)

Sheets not numbered consecutively, and in Arabic numerals beginning with number 1. Fig.(s) \_\_\_\_\_

## 15. NUMBERING OF VIEWS. 37 CFR 1.84(u)

Views not numbered consecutively, and in Arabic numerals, beginning with number 1. Fig.(s) \_\_\_\_\_

## 16. CORRECTIONS. 37 CFR 1.84(w)

Corrections not made from PTO-948 dated \_\_\_\_\_

## 17. DESIGN DRAWINGS. 37 CFR 1.152

Surface shading shown not appropriate. Fig.(s) \_\_\_\_\_

Solid black shading not used for color contrast.

Fig.(s) \_\_\_\_\_

COMMENTS

REVIEWER

OBR

DATE

4/30/01

TELEPHONE NO.

203 308 1357

ATTACHMENT TO PAPER NO.

8

APPLICANT'S COPY

MODE = MEMORY TRANSMISSION

START=FEB-19 14:42

END=FEB-19 14:46

FILE NO.=811

STN NO.	COMM.	ABBR NO.	STATION NAME/TEL NO.	PAGES	DURATION
001	OK	*	17037464590	008/008	00:02:54

-PATTERSON THUENTE WI -

\*\*\*\*\* -PATTERSON WI - \*\*\*\*\* 414 276 0982- \*\*\*\*\*

**PATTERSON, THUENTE, SKAAR & CHRISTENSEN, LLC**

2000 US Bank Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5345

**FACSIMILE COVER SHEET**

TELEPHONE: (414) 276-0977

FACSIMILE: (414) 276-0982

TOTAL NUMBER OF PAGES BEING SENT (INCLUDING COVER SHEET): 8

☐ Original documents to follow by mail

☒ No originals will be sent

DATE: 19 February 2003

TO: EXAMINER SCHERBEL, BOX DAC

FAX #: (703) 746-4590

PHONE#: (703) 308-1272

YOUR REF.: USSN 09/541,779

OUR REF.: W1031.45-US-01  
[Formerly 133.046]

FROM: JULIE A. ZAVORAL

PHONE#: (414) 276-0977

COMMENTS:

\*

THIS FACSIMILE TRANSMISSION CONTAINS LEGALLY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED FOR THE PARTY IDENTIFIED ABOVE. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE CALL PATTERSON, THUENTE, SKAAR & CHRISTENSEN COLLECT AT (414) 276-0977. DISTRIBUTION, REPRODUCTION OR ANY OTHER USE OF THIS TRANSMISSION BY ANY PARTY OTHER THAN THE INTENDED RECIPIENT IS STRICTLY PROHIBITED.

FACSIMILE SENT BY J. WHITE

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
	)	
Hisatoshi HIROTA	)	
	)	
Application No.: 09/541,779	)	Office of Petitions
	)	Patent and Trademark Office
Filed: April 3, 2000	)	
	)	
Title: CAPACITY CONTROLLER	)	
OF CAPACITY VARIABLE	)	
COMPRESSOR	)	
	)	

---

**SUPPLEMENTAL INFORMATION FOR PETITION  
TO WITHDRAW HOLDING OF ABANDONMENT**

ATTN: Examiner Scherbel  
Box DAC  
Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

This supplemental information is being provided to clarify the information provided in the original Petition to Withdraw Holding of Abandonment, which was faxed to the PTO on March 11, 2002.

This supplemental information is being provided by the firm of Patterson, Thunte, Skaar & Christensen, L.L.C. The Patterson firm has taken over responsibility for the above-identified patent application from Mr. James E. Nilles, who has recently retired and closed the Nilles & Nilles, S.C. firm. The Patterson firm is a separate entity from the Nilles firm, but has taken over the space formerly occupied by the Nilles firm, and has access to the docketing system formerly used by the Nilles firm.

Applicant asserts that the Office communication having a mailing date of May 9, 2001, which was received from the PTO, did not include an Office Action.

In particular, Applicant asserts that the Office communication having a mailing date of May 9, 2001 merely included a PTO-90C cover sheet, a PTO-413 form comprising two pages, (one sheet titled Interview Summary and the second sheet titled Summary of Record Interview Requirements), and a Notice of Draftperson's Patent Drawing Review.

A search of the file jacket reveals that the above-listed items are the only items in the file for this application corresponding to the May 9, 2001 Office communication. No Office Action appears in the file, nor any indication that an Office Action was received appears in the file. The only prior art references in the file are those that were listed on form PTO-1449, submitted with an Information Disclosure Statement dated March 9, 2001.

When the May 9, 2001 Office communication was received, the person (unknown) who did the docketing at the Nilles firm did docket two dates: a three month date of Aug. 9, 2001 and a six month date of Nov. 9, 2001. It must be noted, however, that these entries were entered in the docket system with entry code 1, which is "Office Action or Examiner's Letter." Quite possibly, the person who did the docketing was unsure about what to do with an Interview Summary, and to be on the safe side, docketed standard response times. A copy of the docketed items that are printed out as stickers and attached to the Office communication is attached hereto.

On August 31, 2001, for whatever reason, the docket records pertaining to the Office communication were deleted. A search of the file jacket and computer word processing files indicate that no Response to an Office Action was ever prepared or attempted. Quite possibly, at that time, Mr. Nilles reviewed the file jacket, noted only an Interview Summary, and requested that the docket records be deleted.

The handwritten notes of Mr. Nilles in this file written on a sheet of yellow paper dated Feb. 22, 2002 state: "I only rec'd interview summary (1 page) and never rec'd action."

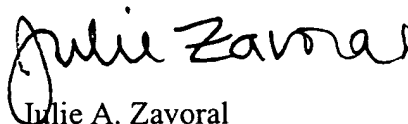
Thus, Applicant asserts that this Application was not properly held abandoned. Accordingly, Applicant requests the withdrawal of the holding of abandonment.

Application No. 09/541,779

Should the Examiner have any further questions or comments, the Examiner is invited to contact the Applicant's undersigned representative at the telephone number listed below.

The Commissioner is hereby authorized to deduct any additional fees arising as a result of this or any other communication from or to credit any overpayments to Deposit Account No. 50-2522.

Respectfully submitted,



Julie A. Zavoral  
Attorney for Applicant(s)  
Registration No. 43,304

Customer No. 35110  
Patterson, Thunte, Skaar & Christensen, LLC  
2000 US Bank Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5345  
Telephone: (414) 276-0977  
Facsimile: (414) 276-0982

*Please grant any extension of time necessary for entry; charge any fee due to Deposit Account No. 50-2522*

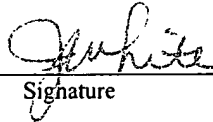
CERTIFICATE OF FACSIMILE

(703) 746-4590

I hereby certify that this document is being deposited with the United States Patent and Trademark Office via facsimile transmission to (703) 308-6916 to the Attention of: Examiner Scherbel, Box DAC, Assistant Commissioner for Patents, Washington, D.C. 20231 on 18 February 2003.

J. White

Printed Name

  
Signature



Application No. 09/541,779

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J. White

Printed Name

J. White

Signature



## UNITED STATES DEPARTMENT OF COMMERCE

## United States Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/541,779 04/03/00 KINUTA

H 133,040

JAMES E NILLES  
NILLES & NILLES SC  
FISTAR CENTER SUITE 2000  
777 EAST WISCONSIN AVENUE  
MILWAUKEE WI 53202-5345

0902/0509

EXAMINER

SOLAK, T

ART UNIT

PAPER NUMBER

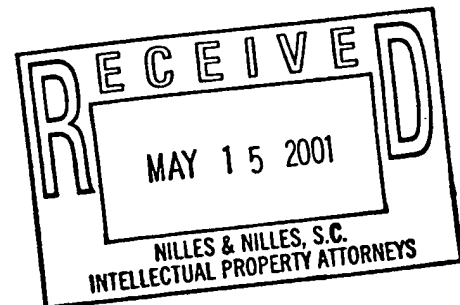
3740

DATE MAILED:

05/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks



FILE NO:US09541779ATTY:JEN  
DUE DATE:08-09-2001 ( 20010809 )  
GRUNECKER, KINK/INIT:( 20010509 )  
ACTION:01 RES PER:3 M DK1  
/ 14740

FILE NO:US09541779ATTY:JEN  
DUE DATE:11-09-2001 ( 20011109 )  
GRUNECKER, KINK/INIT:( 20010509 )  
ACTION:01 RES PER:6 MONTHS DK1  
6 Month Follow-up Notice / 14741

# Interview Summary

Application No.

09/541,779

Applicant(s)

HIROTA, HISATOSHI

Examiner

Timothy P. Solak

Art Unit

3746

All participants (applicant, applicant's representative, PTO personnel):

(1) Timothy P. Solak.

(3)\_\_\_\_\_

(2) Mr. Nilles.

(4)\_\_\_\_\_

Date of Interview: 27 April 2001 .

Type: a) ☒ Telephonic b) ☐ Video Conference  
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.

If Yes, brief description:

Claim(s) discussed: 1-10 .Identification of prior art discussed: None .Agreement with respect to the claims f) ☒ was reached. g) ☐ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: I informed Mr. Nilles of problems in claims 1-9, namely claims 1-3 were narrative in nature and lacked structure and (method) claims 8-9 lacked steps. Mr. Nilles informed me that he would fax a pre-amendment .

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

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\_\_\_\_\_  
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## ary of Record of Interview Requirement

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09/541779

# NOTICE OF DRAFTPERSON'S PATENT DRAWING REVIEW

The drawing filed (insert date) 4/3/00 are:

A. ✓ not objected to by the Draftperson under 37 CFR 1.84 or 1.152.

B. ✓ objected to by the Draftperson under 37 CFR 1.84 or 1.152 as indicated below. The Examiner will require submission of new, corrected drawings where necessary. Corrected drawings must be submitted according to the instructions on the back of this notice.

## 1. DRAWINGS. 37 CFR 1.84(a): Acceptable categories of drawings: Black ink. Color.

Color drawing are not acceptable until petition is granted.

Fig.(s) \_\_\_\_\_

Pencil and non black ink is not permitted. Fig(s) \_\_\_\_\_

## 2. PHOTOGRAPHS. 37 CFR 1.84(b)

Photographs are not acceptable until petition is granted.

3 full-tone sets are required. Fig(s) \_\_\_\_\_

Photographs not properly mounted (must bryistol board or photographic double-weight paper). Fig(s) \_\_\_\_\_

Poor quality (half-tone). Fig(s) \_\_\_\_\_

## 3. TYPE OF PAPER. 37 CFR 1.84(e)

Paper not flexible, strong, white and durable.

Fig.(s) \_\_\_\_\_

Erasures, alterations, overwritings, interlineations, folds, copy machine marks not acceptable. (too thin)

Mylar, vellum paper is not acceptable (too thin).

Fig(s) \_\_\_\_\_

## 4. SIZE OF PAPER. 37 CFR 1.84(f): Acceptable sizes:

21.0 cm by 29.7 cm (DIN size A4)

21.6 cm by 27.9 cm (8 1/2 x 11 inches)

All drawings sheets not the same size.

Sheet(s) \_\_\_\_\_

## 5. MARGINS. 37 CFR 1.84(g): Acceptable margins:

Top 2.5 cm Left 2.5 cm Right 1.5 cm Bottom 1.0 cm  
SIZE: A4 Size

Top 2.5 cm Left 2.5 cm Right 1.5 cm Bottom 1.0 cm  
SIZE: 8 1/2 x 11

Margins not acceptable. Fig(s) \_\_\_\_\_

Top (T) \_\_\_\_\_ Left (L) \_\_\_\_\_

Right (R) \_\_\_\_\_ Bottom (B) \_\_\_\_\_

## 6. VIEWS. CFR 1.84(h)

REMINDER: Specification may require revision to correspond to drawing changes.

Views connected by projection lines or lead lines.

Fig.(s) \_\_\_\_\_

Partial views. 37 CFR 1.84(h)(2)

Brackets needed to show figure as one entity.

Fig.(s) \_\_\_\_\_

Views not labeled separately or properly.

Fig.(s) \_\_\_\_\_

Enlarged view not labeled separately or properly.

Fig.(s) \_\_\_\_\_

## 7. SECTIONAL VIEWS. 37 CFR 1.84(b)(3)

Hatching not indicated for sectional portions of an object.

Fig.(s) \_\_\_\_\_

Sectional designation should be noted with Arabic or

Roman numbers. Fig.(s) \_\_\_\_\_

## 8. ARRANGEMENT OF VIEWS. 37 CFR 1.84(i)

Words do not appear on a horizontal, left-to-right fashion when page is either upright or turned, so that the top becomes the right side, except for graphs. Fig.(s) \_\_\_\_\_

Views not on the same plane on drawing sheet. Fig.(s) \_\_\_\_\_

## 9. SCALE. 37 CFR 1.84(k)

Scale not large enough to show mechanism with crowding when drawing is reduced in size to two-thirds in reproduction.

Fig.(s) \_\_\_\_\_

## 10. CHARACTER OF LINES, NUMBERS, & LETTERS. 37 CFR 1.84(l)

Lines, numbers & letters not uniformly thick and well defined, clean, durable and black (poor line quality).

Fig.(s) 1, 3, 6, 8

## 11. SHADING. 37 CFR 1.84(m)

Solid black areas pale. Fig.(s) \_\_\_\_\_

Solid black shading not permitted. Fig.(s) \_\_\_\_\_

Shade lines, pale, rough and blurred. Fig.(s) \_\_\_\_\_

## 12. NUMBERS, LETTERS, & REFERENCE CHARACTERS.

37 CFR 1.48(p)

Numbers and reference characters not plain and legible.

Fig.(s) \_\_\_\_\_

Figure legends are poor. Fig.(s) 4, 11

Numbers and reference characters not oriented in the same direction as the view. 37 CFR 1.84(p)(3) Fig.(s) \_\_\_\_\_

English alphabet not used. 37 CFR 1.84(p)(3) Fig.(s) \_\_\_\_\_

Numbers, letters and reference characters must be at least

.32 cm (1/8 inch) in height. 37 CFR 1.84(p)(3) Fig.(s) \_\_\_\_\_

## 13. LEAD LINES. 37 CFR 1.84(q)

Lead lines cross each other. Fig.(s) \_\_\_\_\_

Lead lines missing. Fig.(s) \_\_\_\_\_

## 14. NUMBERING OF SHEETS OF DRAWINGS. 37 CFR 1.48(i)

Sheets not numbered consecutively, and in Arabic numerals beginning with number 1. Fig.(s) \_\_\_\_\_

## 15. NUMBERING OF VIEWS. 37 CFR 1.84(u)

Views not numbered consecutively, and in Arabic numerals, beginning with number 1. Fig.(s) \_\_\_\_\_

## 16. CORRECTIONS. 37 CFR 1.84(w)

Corrections not made from PTO-948 dated \_\_\_\_\_

## 17. DESIGN DRAWINGS. 37 CFR 1.152

Surface shading shown not appropriate. Fig.(s) \_\_\_\_\_

Solid black shading not used for color contrast.

Fig.(s) \_\_\_\_\_

## COMMENTS

REVIEWER

QBR

DATE

4/30/01

TELEPHONE NO.

703 308 1357

ATTACHMENT TO PAPER NO. 8

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